

EUDO CITIZENSHIP OBSERVATORY

NATURALISATION PROCEDURES FOR IMMIGRANTS CZECH REPUBLIC

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February 2013

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EUDO Citizenship Observatory
Migration Policy Group
in collaboration with
Robert Schuman Centre for Advanced Studies
Naturalisation Procedures Report, RSCAS/EUDO-CIT-NP 2013/5
Badia Fiesolana, San Domenico di Fiesole (FI), Italy

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Published in Italy
European University Institute
Badia Fiesolana
I – 50014 San Domenico di Fiesole (FI)
Italy
www.eui.eu/RSCAS/Publications/
www.eui.eu
cadmus.eui.eu

Research for EUDO Citizenship Observatory Reports has been jointly supported by the European Commission grant agreement HOME/2010/EIFX/CA/1774 ACIT and by the British Academy Research Project CITMODES (both projects co-directed by the EUI and the University of Edinburgh).

The financial support from these projects is gratefully acknowledged.

For information about the project please visit the project website at <http://eudo-citizenship.eu>

Naturalisation Procedures for Immigrants

Czech Republic

Andrea Baršová

1. Introduction

In the last two decades, the Czech Republic has become an important country of immigration. Although the recent economic crises led to a slight decrease in the total number of immigrants living in the Czech Republic (with a peak of 439,000 in 2008, which fell to 404,000 by 2011), the numbers of foreign nationals with permanent resident status have been increasing steadily since the early 1990s. In 2011, more than 198,000 foreign nationals with permanent resident status lived in the Czech Republic. In the same year, only 1,653 foreign permanent residents were naturalised.¹ In preceding years, the numbers of newly naturalised citizens were even lower (1,128 in 2009, 1,088 in 2010).²

This indicates that the Czech Republic is a country with an extremely low citizenship acquisition rate, as was also confirmed by an EU-wide survey published by Eurostat in 2010.³ The situation is obviously influenced by its strict legal conditions for naturalisation (involving the renunciation of former citizenship in most cases), which has led some analysts to the conclusion that “only the fundamental re-evaluation of the current legislation can contribute to the increased interest in the naturalisation”.⁴ However, the implementation practice by the Ministry of the Interior, which decides on naturalisation, does play an important role as well. This paper focuses on problems linked to the implementation of naturalisation rules.

¹ Ministerstvo vnitra ČR, Sněmovní tisk 795/0, Zpráva o situaci v oblasti migrace a integrace na území České republiky v roce 2011, 2012. [online] Poslanecká sněmovna parlamentu České republiky, available at <http://www.psp.cz/sqw/text/tiskt.sqw?O=6&CT=795&CT1=0> (accessed Oct 31, 2012), pp. 3, 103.

² Ministerstvo vnitra ČR, Sněmovní tisk 437/0, Zpráva o situaci v oblasti migrace a integrace na území České republiky v roce 2010, 2011. [online] Poslanecká sněmovna parlamentu České republiky, available at <http://www.psp.cz/sqw/text/tiskt.sqw?O=6&CT=437&CT1=0> (accessed Oct 31, 2012), p. 101; Ministerstvo vnitra ČR, Sněmovní tisk 21/0, Zpráva o situaci v oblasti migrace a integrace na území České republiky v roce 2009, 2010. [online] Poslanecká sněmovna parlamentu České republiky, available at <http://www.psp.cz/sqw/text/tiskt.sqw?O=6&CT=21&CT1=0>, (accessed Oct 31, 2012), p. 79.

³ According to the findings of Eurostat published in 2010, in 2007-2008, 0.1 person per 1000 inhabitants and 3 per 1000 resident foreigners acquired Czech citizenship annually. The overage in the EU-27 was 1.4 and 23 respectively. Eurostat, Acquisition of citizenship in the EU, EU27 Member States granted citizenship to 696 000 persons in 2008, [online], available at http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-06072010-AP/EN/3-06072010-AP-EN.PDF (accessed Oct 31, 2012).

⁴ KUČERA, Libor (ed.), *Studie “Východiska migračních politik”: Udělování státního občanství* (Study on the Fundamentals of the Migration Policies: Naturalization), Consortium of Migrant Assisting Organisations in the Czech Republic, [2011], [online], available at http://www.konsorcium-nno.cz/dokumenty/udelovani-statniho-obcanstvi_201112071118423.doc, p. 24, (accessed Oct 31, 2012).

2. Naturalisation left outside integration measures

In traditional countries of immigration, naturalisation of immigrants is seen as a logical sequence in the immigration and integration circle. In Czech society, such an approach is missing despite considerable government efforts to foster integration of immigrants. Immigrants are not seen as “citizens in waiting”, but rather as “permanent foreigners”, albeit with a favourable status. Paradoxically, one might even observe that naturalisation, that is becoming a member of the nation, is seen as a private issue.

In February 2011, the Government of the Czech Republic adopted a new strategy for the integration of immigrants called *Living Together* (Společné soužití).⁵ In its introduction the document provides a brief evaluation of integration indicators. One paragraph, consisting of three sentences, is dedicated to naturalisation. It states that the number of foreign residents – third country nationals, who acquire the Czech citizenship, “is in the region of just under one thousand persons annually but over the long term this number is tending to fall” [emphasis added]. Foreigners who acquire Czech citizenship represent less than 1% of all third country nationals with permanent resident status.⁶ Despite this finding, the Strategy is further silent on naturalisation. It does not view low naturalisation rates as disturbing, and consequently, does not search for its causes. Similarly, annual reports by the Ministry of the Interior on migration and integration (detailed documents otherwise not lacking an analytical approach) do not discuss naturalisation issues in detail.⁷

The recent study on naturalisation by the *Consortium of Migrants Assisting Organisations in the Czech Republic*, edited by Libor Kučera, (further Consortium Study)⁸ is one of the rare documents that addresses low naturalisation rates and tries to find answers.⁹ It first observes that not only the numbers of naturalised foreigners are low, but that this finding also holds true for the numbers of submitted applications, which also show a decreasing trend. In 2000, the Ministry received 2,608 applications for naturalisation, in 2005 it received 1,890 applications and in 2010 1,611 applications only.¹⁰ The study further briefly discusses possible causes. The authors suggest that perhaps Czech citizenship is simply not attractive for certain categories of permanent residents. (Permanent residents enjoy almost the same rights as Czech citizens, with the exception of some political rights, holding elected and

⁵ Ministry of the Interior, Updated Policy for Integration of Immigrants – Living Together – and Proposal for Further Steps in 2011, Document approved by the Resolution of the Government of the Czech Republic dated February 9, 2011, No. 99, 29 p, available in English version at <http://www.mvcr.cz/mvcren/article/integration-of-foreigners-within-the-territory-of-the-czech-republic.aspx>, p. 4. (accessed Oct 31, 2012).

⁶ Ibid., p. 4.

⁷ For instance the report for 2011, which without annexes is 192 pages long, devotes one page only to citizenship. It provides basic information on statistics and on draft legislation, but does not explain the existing trends. See above, footnote 1.

⁸ Libor KUČERA (ed.), *Studie “Východiska migračních politik”: Udělování státního občanství*, Consortium of Migrant Assisting Organisations in the Czech Republic, [2011], [online], available at http://www.konsorcium-nno.cz/dokumenty/udelovani-statniho-obcanstvi_201112071118423.doc (accessed Oct 31, 2012)

⁹ Most studies cover naturalisation, and its aspects, as a legal issue. Among most important are the following: MOLEK, Pavel – ŠIMÍČEK, Vojtěch, Udělování státního občanství - na cestě od milosti státu k soudně přezkoumatelnému správnímu uvážení. *Právník*, Praha, Academia, 2005, 144, No. 2, pp. 137-156; KUČERA, Viktor, *Státní občanství České republiky se zaměřením na problematiku jeho udělování*, Masarykova univerzita, Právnická fakulta, Rigorózní práce, Brno, 2008, available at http://is.muni.cz/th/19858/pravf_r/Statni_obcanstvi_CR_se_zamerenim_na_problematiku_jeho_udelovani.pdf (accessed Oct 31, 2012); KUČERA, Viktor, Udělování státního občanství – řádné odůvodňování zamítavých rozhodnutí jako pojistka proti svévoli a garance přezkoumatelnosti, *Právní rozhledy*, 2005, No. 18, pp. 663 – 667.

¹⁰ Libor KUČERA (ed.), *Studie ...*, p. 5.

certain other posts, serving in civil service and in the armed forces, security of residence and diplomatic protection.) Further negative factors are seen in the request to renounce prior citizenship and in the nature of the naturalisation procedure, which is demanding and lacks transparency. These conditions lead migrants to believe that a chance to obtain citizenship is low, suggests the study.¹¹ However, these explanations are based on qualified observations made by practitioners who assist migrants, not on social scientific research.

The explanations given by the *Consortium Study* are partly confirmed by the preliminary results of the *Research on living conditions of settled immigrants in the Czech Republic*, launched in May 2012 by the Counselling Centre for Citizenship, Civic and Human Rights.¹² The research will include 400 immigrants, both immigrants with permanent residence status and immigrants who acquired Czech citizenship. The research also studies barriers to naturalisation as seen by immigrants themselves. The most frequent reasons, given by the immigrants in response to question, why they do not ask for naturalisation, involved the non-availability of dual citizenship, visits to home country and business relations. Many immigrants are not interested in voting rights; political problems discussed in the Czech Republic are sometimes perceived as marginal if compared to problems in their home countries. Contrary, immigrants who seek naturalisation see citizenship as means promoting integration, not as a reward. They want to be included in the society, to be equal members.

As the state strategy for integration of immigrants does not see naturalisation as an important issue, it does not involve any direct measures to promote access to citizenship either. Consequently, government activities to promote access to citizenship (both within the framework of the strategy and beyond) are at best indirect and marginal.

The government did not run any naturalisation campaign in the last decade. There are no information and counselling services specifically established for naturalisation applicants.¹³ Counselling on access to citizenship is provided by some non-governmental organisations free of charge and by specialised lawyers.¹⁴ There is no specific promotional web page for naturalisation either. Potential immigrants can find some basic information on naturalisation either on the web page of the Ministry of the Interior or on the web page *Doma v ČR* (At home in the Czech Republic), sponsored by the Open Society Fund.¹⁵

3. Naturalisation procedures

Naturalisation is a complex administrative process, involving authorities at the local/regional and central levels. It may be seen as consisting of two parts, the proceeding before the

¹¹ Ibid., p. 5.

¹² The preliminary results of the research were presented at the round table to discuss the new Bill on Citizenship of the Czech Republic on 10 January 2013. See *Zápis z kulatého stolu o novém zákonu o státním občanství České republiky konaného dne 10.1.2013*. For more information on the research see also Poradna pro občanství, občanská a lidská práva [online], <http://cizinci.poradna-prava.cz/vyzkum.html>.

¹³ Applicants can address decision-making authorities with individual requests for information, e.g. via an e-mail address published on the web page of the Ministry of the Interior or by phone.

¹⁴ See also section 7 below.

¹⁵ The web page *Doma v České republice* contains a well written text on acquisition of citizenship by Pavel Čížinský, dated August 4, 2006. See <http://www.domavcr.cz/rady-pro-zivot-v-ceske-republice/statni-obcanstvi/statni-obcanstvi>, (accessed Oct 31, 2012).

regional authority and proceedings before the Ministry of the Interior, which decides on naturalisation.¹⁶

Applications for naturalisation are lodged at the respective regional authority (krajský úřad)¹⁷ according to the place of permanent residence of the applicant, in Prague at the authorities of individual boroughs, and in Brno, Plzeň and Ostrava at the municipal authorities (magistrát) of these three major cities. An applicant fills in a questionnaire¹⁸ with an official of such an authority who also verifies the applicant's knowledge of the Czech language via an interview. The application form - a questionnaire to be attached to the application for Czech nationality - is available only at the relevant authority.¹⁹

The official of the regional authority checks if the application is complete and sends it, accompanied by the authority's own opinion, the opinion of the municipal authority of the place of applicant's residence, and other relevant documents through the Police (who also enclose their opinion) to the Ministry of the Interior. The time limit set for forwarding the application to the Ministry of the Interior for decision is 30 days.

An oral language test (maximum 30 minutes) in Czech is carried out by the staff of the authorities which accept the application for naturalisation. The language test, which forms one of the conditions for naturalisation for all but Slovak citizens, is provided free of charge. The level of requested knowledge may differ from one authority to another. The new draft citizenship law, introduced in October 2012 by the Government to the Lower Chamber of the Parliament²⁰ intends to shift the practice towards more professional testing and augment the requested level of language skills. This raises fears among migrants and assisting NGOs as there are no publicly run language or integration courses for naturalisation applicants.

The Ministry first checks if the application is complete. It may request further documents from the applicant (see Section 4 below) and invite her/him for a personal interview. In practice, the request to submit further documents is linked to establishing the date for the interview.²¹ The Ministry is also obliged to consider the application as regards the state's security interests. In practice, if the applicant is older than 15 years, the Ministry always requests the opinion of the Information Services and the Police. These opinions are not part of the file and the Ministry does not refer in decisions to the content of these documents. The evaluation of the security viewpoint is thus "a kind of neuralgic point of the whole naturalisation process, which in a very fundamental way determines the discretionary power of the Ministry".²² In reaction to the critique for the lack of substantiation of negative

¹⁶ Viktor KUČERA, *Státní občanství České republiky se zaměřením na problematiku jeho udělování*, Masarykova univerzita, Právnická fakulta, Rigorózní práce, Brno, 2008, available at http://is.muni.cz/th/19858/pravf_r/Statni_obcanstvi_CR_se_zamerenim_na_problematiku_jeho_udelovani.pdf, p. 107.

¹⁷ There are 14 self-governing regions, including the capital Prague, in the Czech Republic.

¹⁸ This way of completing the questionnaire is regulated by Section 10, Para 2 of the Citizenship Act. It is quite exceptional. Normally, in administrative procedure, it is the applicant who fills in the application herself / himself.

¹⁹ The questionnaire forms an attachment to Act No. 40/1993 Coll. (Act on Citizenship of the Czech Republic), and thus applicants can become familiar with it in advance.

²⁰ Tisk 827/0, Vládní návrh zákona o státním občanství České republiky a o změně některých zákonů (zákon o státním občanství České republiky. Poslanecká sněmovna parlamentu ČR. [online], available at <http://www.psp.cz/sqw/tisky.sqw?O=6&T=827> (accessed Oct 31, 2012).

²¹ Viktor KUČERA, *Státní občanství...*, p. 112.

²² Viktor KUČERA, *Udělování státního občanství*, p. 666.

decisions, based on security grounds, the Ministry now proposes to exclude these decisions from judicial review.

The Ministry is required to decide within 90 days after receiving the application. However, if the Ministry decides to grant citizenship, the procedure is temporarily suspended and the applicant is asked to submit a document proving that by being granted Czech nationality he/she will lose his/her current nationality. The document suspending the procedure contains the “promise to grant Czech nationality” (*příslib udělení státního občanství České republiky*). Only thereafter is the applicant expected to seek a release from his/her current citizenship.²³ Once the applicant submits the requested document proving the loss of citizenship, the procedure is resumed.

The suspension of the procedure for the purpose of obtaining the certificate of release may amount to months and even years of waiting, depending on the individual circumstances of the case and on the practice in the country of origin.²⁴ In some of these cases which reached the ombudsman’s office in 2001 – 2006, the period was repeatedly prolonged by the Ministry for years, as the applicant was not able to obtain and submit the requested document. The ombudsman criticised this practice and in his 2006 annual report was satisfied that the Ministry, in reaction to this critique, has changed its approach.²⁵ However, the need to get the document still necessarily prolongs the procedure and causes other problems (see also below). The procedure may also be suspended for other reasons. Consequently, the average duration of the naturalisation is longer than 90 days.

If the decision by the Ministry is positive, the foreigner acquires Czech citizenship through taking the citizenship oath. In cases when the applicant does not take the oath (e.g. he/she is a minor or was excused from taking the oath), special administrative rules apply as regards the entry into force of the citizenship certificate handed over to the applicant or his/her representative.

New citizens take oath in a ceremony which involves public dignitaries, namely secretaries of municipal offices.²⁶ Abroad, the citizenship oath involves the head of a Czech embassy. Except for the specification of officials who witness the oath, the ceremony is not described by law. Therefore, it differs locally. Available information (e.g. on web pages of municipalities) indicates that ceremonies usually take place in ceremonial halls of town halls and some close relatives are invited, in particular in smaller municipalities.

²³ The “promise” and its issuing are not regulated by law, but by administrative practice only. Therefore, it may pose certain risks for some less informed applicants.

²⁴ For instance, the procedure is likely to be long in relation to Vietnam. In Vietnam, the release from citizenship involves the president, see Le DUC DUY, *Vietnamská komunita v České republice a státní občanství* (Vietnamese Community in the Czech Republic and Naturalisation), M.A. thesis, Právnická fakulta MU, Brno, 2010/2011, p. 32. Vietnamese form the third largest immigration community in the Czech Republic (55,000 persons), following Ukrainians (104,000 persons) and Slovaks (81,000 persons) in 2011.

²⁵ Veřejný ochránce práv, Zpráva o činnosti veřejného ochránce práv v roce 2006, veřejný ochránce práv [online] available at http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snmovnu/Souhrnna_zprava_VOP_2006.pdf (accessed Oct 31, 2012).

²⁶ In Prague, it is a secretary to a borough (district) office and in Brno, Ostrava and Plzeň the secretaries to the magistrates.

4. Documentation²⁷

Naturalisation is a process which requests a large bulk of documents and some time.

The application for naturalisation, written in the form of a letter²⁸ should be accompanied by the following documents:

- A completed questionnaire (see also above),
- A birth certificate (or the certificate of birth and baptism),
- A certificate of marriage (if the applicant has entered into marriage),
- A certificate on divorce or certificate of death of a spouse,
- A certificate proving that by naturalisation the applicant will lose his/her current nationality or which proves that he/she has lost his/her current nationality - unless the applicant is a stateless person or a recognised refugee,
- A Curriculum Vitae.

A married couple can submit a joint application for naturalisation. Parents, or one parent, can also include in their application a child under 18 years. If a child is included in an application the following documents must be attached:

- the birth certificate of the child,
- a document proving that by being granted Czech nationality the child will lose its current nationality or which proves that the child has lost his/her current nationality - unless the child is a stateless person or a recognised refugee,
- if an application is lodged only by one parent the consent of the other parent to the change of nationality of the child is required unless his/her execution of parental responsibility has been restricted or suspended, or he/she is no longer legally competent (which must be supported by court declaration even where the parents are divorced) or if the residence of the other parent living abroad is not known.²⁹

As mentioned above, a document that often causes delays in naturalisation procedure is the certificate proving that by naturalisation the applicant will lose his/her current nationality or which proves that he/she has lost his/her current nationality. This document is linked to other problems as well. A case which reached the ombudsman's office in 2007 shows that the Ministry, in a case of a Ukrainian national, did not accept the text of the respective Ukrainian legislation (which stipulated *ex lege* withdrawal of citizenship in case of naturalisation), but requested an individual certificate from the Ukrainian authorities. The ombudsman was of the opinion that the text of the legislation was acceptable and requested the Ministry to change the practice in relation to all applicants who are in a similar situation.³⁰

²⁷ This section of the paper follows partly the information on *Granting Nationality of the Czech Republic* provided by the Ministry of the Interior on its web page. See <http://www.mvcr.cz/mvcren/article/granting-nationality-of-the-czech-republic.aspx> (The information was updated by the author.)

²⁸ According to the information from the Ministry, the letter should state who is the applicant, what is the matter, what is requested, and to which authority it is addressed; furthermore, it should be signed and dated. It is also appropriate to provide a brief justification.

²⁹ If both parents of the child concerned have been deprived of parental responsibility or execution of their parental responsibility has been restricted or suspended or if they have been incapacitated or if the residence of parents living abroad is unknown, an application may be submitted by a court appointed guardian or the guardian of the child.

³⁰ Veřejný ochránce práv, Zpráva o šetření ve věci podnětu paní O. H. V Brně 8. srpna 2007. Sp. Zn. 850/2007/VOP/PP. Veřejný ochránce práv [online], available at http://www.ochrance.cz/fileadmin/user_upload/STANOVISKA/Statni_obcanstvi/850-07-PP-ZZ.pdf (accessed Oct 31, 2012).

The law does not specify a country where the documentation should come from, as this may differ, e.g. according to the place of birth, death or marriage of the person concerned. However, documents issued by foreign authorities must be furnished by ‘higher authentication’, a super legalisation clause, unless an international agreement stipulates otherwise.³¹ Documents must be officially translated into the Czech language (see below). As regards documents issued by authorities of the Slovak Republic, translation into the Czech language is not required.

The Ministry may excuse submitting certain documents (birth certificate, certificates concerning marriage, divorce or the death of a spouse), provided that obtaining such a document is linked to a barrier, which is difficult to overcome, and facts can be established accurately otherwise.

The Ministry of the Interior may require from the applicant further documents (as stipulated by Section 8 Para 3 of the Citizenship Act), i.e. the certificate by the Finance Office (finanční úřad) on settlement of taxes and fees, copies of tax returns, extract from the Companies Register, copies of trade licences, employment contracts, documents from a health insurance company on payments of public health insurance fees, the certificate from the employer concerning the payment of income taxes and contributions to the public health insurance scheme, social security and the state employment policy. In practice, the Ministry sometimes requests further documents, not stipulated by law, which, in certain cases, is a point of legal controversy.³²

The Ministry obtains directly the criminal records of the applicant from the Criminal Records Registry. As from 1 July 2012, the applicants do not submit documents, if the information needed can be obtained directly by the decision making authorities from public registries and information systems (the Basic Registry of Inhabitants, the Information System on Records on Inhabitants, the Information System on Foreign Residents, the Information System on ID-cards, the Information System on Travel Documents and the Information System of Diplomatic and Service Passports). The new rule is linked to the establishment of Basic Public Registries by Act No. 111/2009 Coll. on Basic Registries.³³

³¹ The situation thus varies from case to case, depending on whether the Czech Republic has signed an international treaty on the recognition of documents with the state that issued the documents. If such a treaty has not been signed, the foreign document must be presented to the relevant Czech diplomatic mission for verification. If the Czech Republic and the state which issued the documents have signed a consular treaty, the verification may be performed by consuls. If the Czech Republic and the state, which issued the documents, have signed a treaty on legal assistance in civil law matters, it will suffice to verify the documents pursuant to the regulations of the concerned state; such a document will enjoy the status and the powers of a Czech public document. Such treaties are in force e.g. with Ukraine and Vietnam. See Pavel ČIŽINSKÝ, Czech citizenship, *Doma v ČR* [online]. August 4, 2006, available at <http://www.en.domavcr.cz/advice-for-living-in-the-czech-republic/citizenship/czech-citizenship> (accessed Oct 31, 2012).

³² For instance, in Case 5 As 39/2009 – 81 decided by the Supreme Administrative Court on August 20, 2009, the court, *inter alia*, addressed the request by the Ministry that the applicant submits information on his bank account. The Court was of the opinion that such a request may be legitimate in relation to the evaluation of security risks, requested by the law. However, this was not the case.

³³ The change was introduced by Act No. 142/2012 Coll. (Act Introducing Changes to Some Acts in Relation to the Establishment of Basic Registers) and entered into force on July 1, 2012. The Act amended the 1993 Citizenship Act.

5. Conditions for naturalisation and discretion in decision making procedure

The naturalisation process is characterised by wide discretionary powers of the Ministry. This is also reflected in the official approach to applicants. The web page of the Ministry states unequivocally: “The Ministry of the Interior may (but is not obliged to) grant nationality of the Czech Republic only to persons satisfying all of the following conditions”. All independent actors, including NGO workers, scholars,³⁴ ombudsman and the Supreme Administrative Court consider the high level of discretion as one of the key problems in naturalisation procedure.³⁵ The Supreme Administrative Court dealt with the exercise of administrative discretion in a number of cases and provided in its jurisprudence clear guidelines to its exercise by the Ministry.³⁶ Nevertheless, a high level of discretion still negatively influences the transparency of procedure and predictability of decision.

Discretion enters into the process at several levels. *First*, the Ministry has some discretion in assessing if the prescribed conditions for naturalisation are met. *Second*, the Ministry may (but is not obliged to) waive certain conditions for naturalisation (see below conditions under points 1, 2, 4 and 5) for reasons stipulated by the law. The requirement specified under point 3 (concerning criminal sentence) cannot be waived. *Finally*, even if all conditions are met, the Ministry (in line with its legal opinion) may deny naturalisation.

As observed by Martin Rozumek, a lawyer working for migrants, the impact of the wide discretion is not always negative for migrants, but always causes unpredictability of decisions. “The belief of the state organ in its own unbounded discretion is naturally transformed into surprising decisions both in negative and positive directions. It is important to say that the Ministry has in the decision making process also a certain humanitarian view on certain cases and in particular foreigners who are handicapped or of older age have a more real chance for positive decision than, for instance, many applicants well integrated in the Czech Republic.”³⁷

It is primarily the high level of discretion, which distinguishes naturalisation from other forms of obtaining Czech citizenship after birth, based on one’s own will, such as obtaining Czech citizenship by declaration. The Ministry, in response to the criticism of the high level of discretion exercised without an explicit mandate, now proposed to include an explicit “integration” provision into the text of the law.³⁸

³⁴ Pavel MOLEK, Vojtěch ŠIMÍČEK, Udělování státního občanství - na cestě od milosti státu k soudně přezkoumatelnému správnímu uvážení. *Právník*, Praha, Academia, 2005, 144, no. 2, pp. 137-156.

³⁵ See also Andrea BARŠOVÁ, Czech Republic Country Report. In: *European Union Democracy Observatory on Citizenship* [online]. 2012 [2012-10-28], available at <http://eudo-citizenship.eu/docs/CountryReports/Czech%20Republic.pdf>.

³⁶ See Resolution of the Extended Chamber of the Supreme Administrative Court, Nejvyšší správní soud, Case 6 A 25/2002 – 42, 23 March 2005 and cases decide by the Supreme Administrative Court, e. g. Case 7 A 31/2002-33, 9 January 2004, Case 2 As 31/2005 – 78, 4 May 2006, Case 5 As 39/2009 – 81, 20 August 2009 at <http://www.nssoud.cz>.

³⁷ Martin ROZUMEK, Nabývání státního občanství ČR udělením aneb Na cestě od absolutní správní úvahy ke standardnímu správnímu řízení (Acquiring the Czech citizenship through naturalisation – on the way from absolute administrative discretion towards the standard administrative procedure), 37 *Bulletin advokacie*, No. 10, 2007, pp. 39 – 45, p. 41.

³⁸ Tisk 827/0, Poslanecká sněmovna parlamentu ČR. [online], available at <http://www.psp.cz/sqw/tisky.sqw?O=6&T=827> (accessed Oct 31, 2012) See Section 13 para 1. The provision reads: “The citizenship of the Czech Republic may be granted, if the applicant is integrated into the society in the Czech Republic, in particular as regards integration from family, work or social perspectives”.

The conditions for naturalisation are as follows (Section 7 Para 1 of Act No. 40/1993 Coll.):

1. he/she has been lawfully permanently residing in the Czech Republic for a period of at least five years as of the date of application (i.e. the permanent residence permit was issued 5 years ago) and whose residence was more or less continuous;
2. he/she proves that by being granted nationality of the Czech Republic he/she will lose their current nationality or proves that they have lost his/her current nationality - unless the person is a stateless person or a recognised refugee;
3. he/she has not been within the last five years sentenced for wilful criminal offences;
4. he/she proves in interview at the relevant authority their knowledge of the Czech language (this does not apply to an applicant who is or who was a citizen of the Slovak Republic), and
5. he/she meets all obligations arising from the provisions of a special legal regulation governing the entry into and residence in the Czech Republic as well as obligations resulting from special provisions regulating public health insurance, social security, pension insurance, taxes, and other mandatory fees.

In addition to these five conditions, the applicant has to meet the “sixth condition” concerning state security. Indirectly, this condition follows from Section 10 Para 3 of the Act on Citizenship (Act No. 40/1993 Coll.) which States that the Ministry of the Interior is also obliged to evaluate the application from the point of view of state security. In order to meet this obligation the Ministry may request an opinion by the Police and the Security Services. Such documents are in practice requested if applicant is older than 15 years. According to information provided by the Ministry, around 5 per cent of applications are rejected on security grounds.

Continuous five-year residence in the Czech Republic (see naturalisation condition No. 1 above) may be waived if an applicant has been permitted permanent residence in the Czech Republic and he/she (Section 11 Para 1):

- was born in the Czech Republic, or
- has been residing in the Czech Republic continuously for a period of at least ten years, or
- had in the past nationality of the Czech Republic or nationality of the former Czech and Slovak Federal Republic, or
- was adopted by a national of the Czech Republic, or
- his/her spouse is a national of the Czech Republic, or
- at least one of his/her parents is a national of the Czech Republic, or
- moved to the Czech Republic before 31 December 1994 on the basis of an invitation by the Government, or
- is a stateless person or was granted the status of recognised refugee in the Czech Republic.

It is possible to waive only the missing duration of continuous residence, not permanent residence itself. Thus, in all naturalisation cases, the applicant must have been permitted permanent residence in the Czech Republic prior to lodging their naturalisation application.

Under Section 11 Para 2 it is also possible to waive conditions with respect to proving that the current nationality has been lost (see naturalisation condition No. 2 above) if the applicant was permitted permanent residence in the Czech Republic and has lawfully resided

in the Czech Republic for a period of at least five years, has a genuine relation to the Czech Republic, and

- the legal regulations of the country of which the applicant is a national do not allow release from nationality or if such country refuses to issue a document on releasing an applicant from nationality, or
- if such release of an applicant from nationality is connected with unreasonable administrative fees or other conditions unacceptable in a democratic country,
- the applicant, by submitting an application for release from citizenship, could expose her/himself or close persons to risk of persecution on the grounds of race, religion, ethnicity, membership of a certain social group or for his/her political opinions,
- granting such nationality would mean a significant contribution for the Czech Republic, in particular if taking into account scientific, social, cultural or sporting achievements,
- if such person lost in the past citizenship of the Czech Republic or citizenship of the former Czech and Slovak Federal Republic, unless he/she is an applicant who is a national of the Slovak Republic.
- Meeting this condition may be also waived for an applicant who has been a permanent resident in the Czech Republic for at least five years, who has a genuine link to the Czech Republic and who has been legally residing in the Czech Republic for a period of at least twenty years (Section 11 Para 3).³⁹

Under Section 11 Para 4 it is further possible to waive the condition of proving knowledge of the Czech language (naturalisation condition No. 4 above) and the condition of compliance with immigration and other specific laws (naturalisation condition No. 5 above), in special cases.

6. Major problems in naturalisation procedure faced by applicants

In addition to extensive discretionary powers by the Ministry, applicants face further obstacles, which lower their chance for a positive outcome of the procedure.

According to the already quoted *Consortium Study* on naturalisation, the Ministry often requests that the applicant meets further criteria, not explicitly stipulated by law. Such criteria concern, in particular, the sufficient integration into the Czech society as regards social, family and working life, the “unity of the citizenship” of the whole family or parents and minor children, and the transparency of income.⁴⁰ As regards the principle of the unity of citizenship it is, according to the quoted study, used to the disadvantage of the applicants. For instance, an application of all members of the same family is rejected based on the non-fulfilment of the conditions by one member of the family. Another case is the rejection of the application with the reference of the “unity of citizenship” if only one member of the family seeks naturalisation.⁴¹

The practice of extending the criteria for naturalisation by the decision making authority was also confirmed and criticised by the ombudsman. In his 2007 annual report, the ombudsman confirmed the existence of the practice and expressed his opinion that it

³⁹ In the past, the beneficiaries of this rule were mainly members of the Polish minority living in the north of Moravia in the border region.

⁴⁰ Libor KUČERA (ed.), *Studie...*, p. 11.

⁴¹ *Ibid.*, 11.

constitutes a breach of the principle of legality of the exercise of public power.⁴² The practice of extending conditions for naturalisation beyond the letter of the law was also criticised repeatedly by the Supreme Administrative Court.⁴³

Further problems in the implementation practice consists in non-observance of the principle of proportionality. This concerns in particular the requirement that the applicant meets obligations arising from migration legislation and special laws regulating public health insurance, social security, pension insurance, taxes, and other mandatory fees. Available studies⁴⁴ and judicial cases⁴⁵ show that a minor breach of duties, committed by omission, can amount to the denial of naturalisation.⁴⁶ Typical breaches of duties, leading to denial of citizenship, are, according to the *Consortium Study*, non-compliance with the reporting duty (e.g. as regards the change in personal status or place of residence) or delays and debts in relation to public health insurance and social security payments, pensions, taxes and other public fees. Reasons for the denial of citizenship are not only existing debts, but also debts or delays in payments that occurred in the past (albeit already settled). The study mentions in particular the payment of health insurance, as the health insurance companies provide very detailed statements.⁴⁷

A study on the access of recognised refugees to Czech citizenship conducted in 2010 also refers to situations when minor breach of law turns to an enduring obstacle to naturalisation.⁴⁸ The study draws attention to observations by NGO workers that a minor breach of existing rules is often a result of the initial situation, when the recognised refugee is not yet familiar with the situation in the Czech Republic.⁴⁹ The new citizenship law should clarify the situation as the draft law explicitly refers to major breach of duties in the last 3 years.

Another problem related to the proportionality principle reported by the study on refugees, is lack of understanding of specific problems of recognised refugees as regards

⁴² Veřejný ochránce práv, Souhrnná zpráva o činnosti veřejného ochránce práv v roce 2007. Available at http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snmovnu/Souhrnna_zprava_VOP_2007.pdf (accessed Oct 31, 2012)

⁴³ The Supreme Administrative Court expressed its opinion that such an extension is only possible on the basis of explicit law provision, such as the security interest stipulated in Section 10, Para 3 of the Citizenship Act. See judgements by the Supreme Administrative Court 2 As 31/2005 – 78 of May 4, 2006; 5 As 39/2009 – 81, of August 20, 2009.

⁴⁴ Libor KUČERA (ed.), *Studie ...*, p. 11 – 12.

⁴⁵ See e. g. Judgement by the Supreme Administrative Court 2 As 31/2005 – 78 of May 4, 2006, judgement by the Supreme Administrative Court 5 As 51/2007-105 of March 13, 2008 available at <http://www.nssoud.cz> The former case involved non-compliance with immigration rules when the applicant was 13 years old, the latter already settled debts in payment for public health insurance. In both cases the Court referred to the proportionality principle.

⁴⁶ However, one should be always cautious in interpretation. A minor breach of duties may not necessarily be the core reason for the rejection. If the Ministry sees the applicant as not integrated enough, the responsible officials may, under the current legislation, prefer to justify the negative decisions on some concrete grounds. An interesting observation in this regard was made by Petr Navrátil. The author describes the practice by the Ministry of the Interior, which can be named “pleading in arguments”. The negative decision by the Ministry mentions only one main argument or part of the arguments substantiating the rejection. If the application is repeated, further arguments are invoked, in spite of the fact that they existed at the time when the original application was submitted. See Petr NAVRÁTIL, *Přístup azylantů ...*, p. 30.

⁴⁷ Libor KUČERA (ed.), *Studie ...*, p. 9.

⁴⁸ The study describes a case when the given reason for the rejection of application in 2009 was a minor delay in the payment of public health insurance in 2003 -2004. Petr NAVRÁTIL, *Přístup azylantů ...*, p. 25.

⁴⁹ Petr NAVRÁTIL, *Přístup azylantů ...*, p. 30.

requested level of integration. This regards, in particular, integration into the labour market which may be linked to limits of the state integration system for recognised refugees.⁵⁰

The already mentioned preliminary results of the *Research on living conditions of settled immigrants in the Czech Republic*, launched in May 2012, indicate that the immigrants see the naturalisation proceedings as burdensome. They often do not understand why the authorities request further documents. Existing practices were perceived as non consistent.⁵¹

Applicants for naturalisation also have to cope with the relatively high cost of the procedure, in particular the high cost of legal counselling and services, if needed. This is often the case in review proceedings. (See Sections 7 and 8 below.)

7. Administrative and Judicial Review⁵²

If the Ministry rejects the application for Czech naturalization, the applicant may file an appeal (*rozklad*) against this decision with the Ministry of the Interior within fifteen days of having received the decision. In 2011, the Ministry rejected 343 negative decisions in the first instance, 171 applicants filed a petition (*rozklad*) against the first instance decision. The Minister overturned 22 cases in the administrative review procedure.⁵³ Although it is not a condition, it is recommended that an appeal (*rozklad*) is compiled by a lawyer or at least with the help of a non-governmental organization.⁵⁴ A decision to approve or reject the appeal is made by the Minister of the Interior on the basis of a recommendation made by a specially appointed committee (*rozkladová komise*). Around 30% of petitions for administrative review are successful.⁵⁵

Should the appeal be rejected by the Minister, the applicant may file a petition contesting the decision within two months of the notification in writing of the final decision by the Ministry. The petition must be filed with the Municipal Court in Prague. By the petition, the petitioner seeks the annulment of the challenged decision. The administrative fee amounts to CZK 3 000 (€ 120). The court renders its final decision on the merits of the case in a judgment. The court can either dismiss the action and uphold the administrative decision or annul the decision and send the case back to the administrative authority for a fresh assessment.

A special remedy against the decision of the Municipal Court in Prague is the cassation petition (*kasační stížnost*) to the Supreme Administrative Court. The administrative fee is CZK 5000 (€ 200). The petition to the Supreme Administrative Court must be filled in within 14 days after the delivery of the judgment by the Municipal Court in Prague.

⁵⁰ In the Czech Republic recognised refugees often depend on the housing provided within the framework of the state integration program. However, the housing available is often in regions with higher unemployment.

⁵¹ *Zápis z kulatého stolu o novém zákonu o státním občanství České republiky konaného dne 10.1.2013.* [Proceedings of the Round Table on the new Citizenship Bill of the Czech Republic, carried out on 10 January 2013.]

⁵² For more information on judicial review see web pages of the Supreme Administrative Court at <http://www.nssoud.cz/Uvod/art/1>.

⁵³ Ministerstvo vnitra ČR. Sněmovní tisk 795/0: Zpráva o situaci v oblasti migrace a integrace na území České republiky v roce 2011, 2012. [online] Poslanecká sněmovna parlamentu České republiky. Available at <http://www.psp.cz/sqw/text/tiskt.sqw?O=6&CT=795&CT1=0> (accessed Oct 31, 2012), p 103.

⁵⁴ Estimated time for a lawyer to compile an appeal (*rozklad*) is 5 – 8 hours of work.

⁵⁵ Libor KUČERA, *Studie ...*, p. 10; Petr NAVRÁTIL, p. 34.

The petitioner does not need to be legally represented before administrative courts of first instance (i.e. the Municipal Court in Prague). This changes, however, in proceedings before the Supreme Administrative Court, where representation by legal counsel (attorney) is mandatory.⁵⁶ It is nonetheless advisable for a petitioner to seek qualified legal advice in the first instance proceedings as well.⁵⁷ Due to the principle of the “concentration of proceedings”, meaning that the petitioner is obliged to submit all relevant evidence before the court of first instance and that later submissions will be disregarded, mistakes and omissions, committed at the first instance due to ignorance, cannot often be corrected on appeal.⁵⁸

The judicial review, and in particular jurisprudence by the Supreme Administrative Court, greatly contributed to the improvement of administrative practices in naturalisation cases. Nevertheless, judicial review is not a very effective remedy from the point of view of rejected applicants. This is so for a number of reasons. *First*, judicial proceedings take a long time (usually one year in the first instance). *Second*, courts can only abolish the decision, and return the case back to the Ministry or the Municipal Court in Prague, respectively; they can not issue a naturalisation decision.⁵⁹ *Finally*, having good legal counselling and representation is a key element in review proceedings. For many applicants, it may however be difficult to obtain such advice because of limited financial means available (although some lawyers are willing to take individual cases *pro bono*).

8. Financial costs

The naturalisation procedure requests certain costs, such as administrative fees, payments for obtaining and translating documents, etc. Substantially higher costs may be linked with a need of legal counselling and representation.

In the Czech Republic, the applicants do not pay any fees for submitting an application for naturalisation, but they pay relatively high administrative fees for issuing the citizenship title. The fee is CZK 10 000 (€ 400) for the naturalisation certificate (the number of persons stated in the naturalisation certificate is not decisive). The Ministry of the Interior may in specially justified cases of state interest decrease the fee to the amount of CZK 1 000. (€ 40).⁶⁰ In practice, such a state interest may be found in relation to the need to comply with international commitments and the fee is likely to be lowered, if the applicant is a recognised refugee, in which case Article 34 of Refugee Convention applies.⁶¹ The administrative fee is paid only if the Czech citizenship is granted, i.e. if the naturalisation certificate is issued. Should the application be rejected, the applicant is not obliged to pay any fees. The new citizenship law should lower the fees and simplify the payment scheme.

Other costs that may normally occur, concern, in particular, the acquisition and translation of foreign official documents issued in a foreign language. Documents must be

⁵⁶ Estimated time for a lawyer to compile a petition to the Supreme Administrative Court is 10 – 15 hours of work.

⁵⁷ Estimated time for a lawyer to compile a petition to the Municipal Court is 8 -10 hours of work.

⁵⁸ Information provided by the official web page of the Supreme Administrative Court at <http://www.nssoud.cz/Uvod/art/1>.

⁵⁹ See also KUČERA, *Studie ...*, p. 13.

⁶⁰ Act No. 634/2004 Coll. (Act on Administrative Fees), which states that “the administrative authority can, in particularly justified cases in state interest lower the fee to CZK 1000”.

⁶¹ Libor KUČERA, *Studie ...*, (ed.), p. 10. The already quoted study by Petr NAVRÁTIL confirms the practice. (p. 51).

officially translated into Czech language by a certified translator appointed pursuant to Act No. 36/1967 Coll. (Act on Experts and Interpreters). In compliance with the implementing directive to Act No. 37/1967 Coll. the lists of interpreters are maintained by the regional courts. Under Section 17 of this directive, the translations from foreign language to Czech are priced between CZK 100 (€ 4) and 350 (€ 14) per page, if they are commissioned by the public authority. The price of official translations for private persons is not regulated and can be higher.

Costs may also arise in relation to personal submission of the application in the seat of the competent regional authority, and further, if the applicant is invited by the Ministry of the Interior for a personal interview. While it is normally not necessary to be accompanied by a lawyer when submitting the application, it may be useful to have a lawyer present at the interview at the Ministry.⁶² In some cases, if the Ministry request further documents to be submitted by the applicant, additional work by a lawyer may be needed.⁶³ Some costs, though likely not very high, may occur in relation to the citizenship oath, which takes place in the seat of the competent municipality with extended competences.⁶⁴

Substantially higher costs occur in cases where legal counselling and representation is needed in administrative and judicial proceedings. It is difficult to estimate the price of legal services, as it depends on many factors, such as complexity of the case, place, reputation of the lawyer, etc. Nevertheless, it can be said that the price not likely to fall below € 50 *per hour* outside the capital Prague and € 80-90 *per hour* in Prague. Some lawyers also provide services *pro bono* in individual cases. (See also Section 7 above for the average estimated workload for individual legal services, which is given in footnotes.)

9. Conclusion

Most independent actors, such as NGOs assisting migrants, scholars, ombudsman and the Supreme Administrative Court consider the high level of discretion a major problem of the implementation practice in naturalisation. Further, related problems, involve the failure to respect the proportionality principle and lack of transparency and predictability of decisions.

The need to renounce previous nationality is also a major obstacle, both *per se*, and in its practical consequences. Length of review proceedings and high costs of legal services constitute additional barriers in access to Czech citizenship. However, low naturalisation rates, which are partly caused by implementation practices in place, are not seen by the government and the society at large as issues of urgent concern. Therefore, the executive so far has not responded to criticism by NGOs and other actors sufficiently.

⁶² Should the applicant be accompanied by a lawyer this may amount to 2 hours of work, and his/her travel costs.

⁶³ In some cases is necessary or advisable to prepare some documents or explanations by a lawyer. This may amount to 3-4 hours of work.

⁶⁴ There are more than two hundred such municipalities in the Czech Republic.

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